

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	MDL No. 1456
LITIGATION)	
)	CIVIL ACTION: 01-CV-12257-PBS
THIS DOCUMENT RELATES TO ALL)	
CLASS ACTIONS)	Judge Patti B. Saris

**PLAINTIFFS' RESPONSE TO MOTION FOR PROTECTIVE ORDER OF
BOEHRINGER INGELHEIM CORPORATION, BEN VENUE LABORATORIES,
INC., AND BEDFORD LABORATORIES**

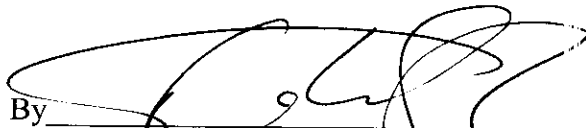
Lead Counsel hereby reply to the Motion for Protective Order of Boehringer Ingelheim Corporation, Ben Venue Laboratories, Inc. and Bedford Laboratories (the "Motion"). On December 31, 2003 the aforementioned Defendants ("Defendants") filed a motion for a protective order seeking relief from discovery on the drug Viramune, pending this Court's decision on the Motions to Dismiss. Plaintiffs do not oppose the Motion and accordingly, at this time, do not seek discovery from Defendants concerning Viramune.

The inclusion of Viramune in correspondence with Defendants concerning the scope of discovery on November 25, 2003 was in error and Plaintiffs had no intention of seeking discovery related to Viramune from Defendants. Although the Motion contains a cursory certification that Defendants complied with Local Rule 37.1 before filing the Motion, the letter of December 4, 2003 from Defendants referenced in the Motion and attached as Exhibit A fails to meet the requirements of Local Rule 37.1.

Nowhere does the letter of December 4, 2003 state that Defendants are contemplating the filing of a motion for protective order or invite Plaintiffs counsel to confer to attempt to narrow the issues pursuant to Rule 37.1. If it had, or if Defendants' counsel had bothered to communicate with Plaintiffs' counsel prior to filing the Motion as is required by Local Rule 37.1, Plaintiffs would have spared Defendants the trouble of filing the Motion at all. No such communication was attempted by Defendants.

Plaintiffs regret the inconvenience their error has caused Defense counsel and this Court, but would stress the need for direct communication between the parties in order to avoid misunderstandings of this nature.

DATED: January 14, 2004

By 

Thomas M. Sobol (BBO#471770)
Edward Notargiacomo (BBO#567636)
Hagens Berman LLP
225 Franklin Street, 26th Floor
Boston, MA 02110
Telephone: (617) 482-3700
Facsimile: (617) 482-3003
LIAISON COUNSEL

Steve W. Berman
Sean R. Matt
Kevin P. Roddy
Hagens Berman LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Samuel Heins
Heins, Mills & Olson, P.C.
3550 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 338-4605
Facsimile: (612) 338-4692

Eugene A. Spector
Spector, Roseman & Kodroff, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611
**CHAIRS OF LEAD COUNSEL
COMMITTEE**

Marc H. Edelson
Hoffman & Edelson
45 West Court Street
Doylestown, PA 18901
Telephone: (215) 230-8043
Facsimile: (215) 230-8735

Kenneth A. Wexler
Elizabeth Fegan Hartweg
The Wexler Firm
One North LaSalle Street, Suite 2000
Chicago, IL 60602
Telephone: (312) 346-2222
Facsimile: (312) 346-0022
**MEMBERS OF LEAD COUNSEL
COMMITTEE AND EXECUTIVE
COMMITTEE**

Michael McShane
Alexander, Hawes & Audet, LLP
300 Montgomery Street, Suite 400
San Francisco, CA 94104
Telephone: (415) 982-1886
Facsimile: (415) 576-1776

Robert E. Piper, Jr.
Piper & Associates
624 Pierre Avenue
Shreveport, LA 71103
Telephone: (318) 226-0826
Facsimile: (318) 424-9900
**MEMBERS OF EXECUTIVE
COMMITTEE**

Anthony Bolognese
Bolognese & Associates
One Penn Center
1617 JFK Boulevard

Suite 650
Philadelphia, PA 19103
Tel: (215) 814-6750
Fax: (215) 814-6764

Jonathan W. Cuneo
The Cuneo Law Group
317 Massachusetts Avenue, N.E.
Suite 300
Washington, D.C. 20002
Tel: (202) 789-3960
Fax: (202) 789-1813

Neal Goldstein (Of Counsel)
Freedman & Lorry, PC
400 Market Street, Suit 900
Philadelphia, PA 19106
Tel: (215) 925-8400
Fax: (215) 925-7516

Michael E. Criden
Hanzman & Criden, PA
Commerce Bank Center, Suite 400
220 Alhambra Circle
Coral Gables, FL 33134
Tel: (305) 357-9000
Fax: (305) 357-9050

Blake M. Harper
Kirk B. Hulett
Hulett Harper LLP
550 West C Street
Suite 1700
San Diego, CA 92101
Tel: (619) 338-1133
Fax: (619) 338-1139

Jonathan D. Karmel
Karmel & Gilden
221 N. LaSalle Street
Suite 1414
Chicago, IL 60601
Tel: (312) 641-2910
Fax: (312) 641-0781

Dianne M. Nast

Roda & Nast, PC
801 Estelle Drive
Lancaster, PA 17601
Tel: 717-892-3000
Fax: 717-892-1200

Henry H. Rossbacher
Rossbacher & Associates
811 Wilshire Boulevard,
Suite 1650
Los Angeles, CA 90017-2666
Tel: (213) 895-6500
Fax: (213) 895-6161

Jonathan Shub
Sheller, Ludwig & Badey, P.C.
1528 Walnut Street, 3rd fl
Philadelphia, PA 19102
Tel: (215) 790-7300
Fax: (215) 546-0942

Scott R. Shepherd
Shepherd & Finkleman, LLC
117 Gayley Street,
Suite 200
Media, PA 19063
Tel: (610) 891-9880
Fax: (610) 891-9883

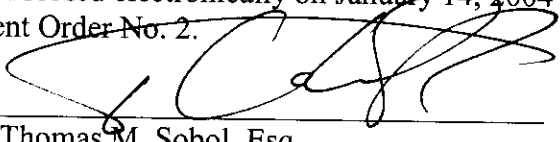
Lisa J. Rodriguez
Ira Neil Richards
Trujillo Rodriguez & Richards, LLC
The Penthouse
226 West Rittenhouse Square
Philadelphia, PA 19103
Tel: (215) 731-9004
Fax: (215) 731-9044

Mitchell A. Toups
Weller, Green, Toups & Terrell, L.L.P.
2615 Calder Street, Suite 400
P.O. Box 350
Beaumont, TX 77704
Tel: (409) 838-0101
Fax: 409-838-6780

Damon Young
Lance Lee
Young, Pickett & Lee
4122 Texas Boulevard
P.O. Box 1897
Texarkana, AR/TX 75504
Tel: (903) 794-1303
Fax: 903-792-5098; 903-794-5098
**ADDITIONAL ATTORNEYS FOR
PLAINTIFFS**

CERTIFICATE OF SERVICE

I hereby certify that I, Thomas M. Sobol, an attorney, caused a true and correct copy of the foregoing Plaintiffs' Response To Motion For Protective Order Of Boehringer Ingelheim Corporation, Ben Venue Laboratories, Inc., And Bedford Laboratories to be served on all counsel of record electronically on January 14, 2004, pursuant to Section D of Case Management Order No. 2.



Thomas M. Sobol, Esq.

HAGENS BERMAN LLP
225 Franklin Street, 26th Floor
Boston, MA 02110
Telephone: (617) 482-3700

HAGENS BERMAN LLP
Attorneys at Law

BOSTON LOS ANGELES PHOENIX SEATTLE

hagens-berman.com

225 FRANKLIN STREET, 26TH FLOOR • BOSTON, MA 02110
(617) 482-3700 • FAX (617) 482-3003

EDWARD NOTARGIACOMO
(617) 482-3700
ed@hagens-berman.com

FILED
CLERK'S OFFICE
2004 JAN 14 P 4:24
U.S. DISTRICT COURT
DISTRICT OF MASS

January 14, 2004

VIA HAND DELIVERY

Clerk's Office
United States District Court
District of Massachusetts
One Courthouse Way, Suite 2300
Boston, MA 02210

Re: In Re: Pharmaceutical Industry Average Wholesale Price Litigation
MDL No. 1456

Dear Sir/Madam:

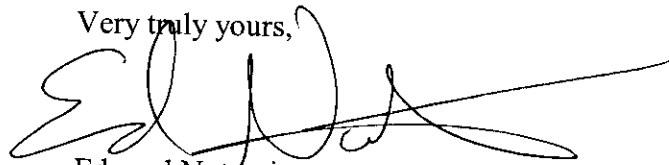
Enclosed for filing in the above-captioned matter please find the following document:

1. Plaintiffs' Response to Motion for Protective Order of Boehringer Ingelheim Corporation, Ben Venue Laboratories, Inc., and Bedford Laboratories

Please acknowledge this filing by date-stamping the enclosed copy of this letter and returning it to the waiting messenger.

Thank you.

Very truly yours,



Edward Notargiacomo

Enclosure

cc: All counsel of record (Via VeriLaw)